Warmal Wil Heavy Duty Pumps Sdn Bhd v Pump Matrix Engineering Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22IP-24–05 OF 2016
LIM CHONG FONG J
30 MAY 2019

Trade Marks — Infringement of — Trademark and passing off — Assessment of damages for infringement of trademark and passing off — Whether plaintiff entitled to damages for loss of business profit for unlawful interference with trade by defendant — Whether plaintiff entitled to damages for injury to goodwill and reputation

This was the assessment of damages after trial on liability in respect of passing off and unlawful interference with trade. The plaintiff was a private limited company involved in the business of trading in pumps. The plaintiff actively promoted its business, products and services by reference to the 'WARMAL' name and trademark and had filed trademark applications for the 'WARMAL' trademark in Class 7 and Class 37. The defendant was also a private limited company and involved in the business of trading in pumps. The plaintiff brought the present suit against the defendant for passing off, infringement of well-known mark and unlawful interference with the plaintiff's trade. The plaintiff claimed for damages for its loss of business profit as well as damages for injury to goodwill and reputation. For the loss of business profit, the plaintiff contended that the sale of its 'WARMAL' pumps that were identified by the 'WARMAL' mark on a metal plate affixed by rivet to all its pumps notwithstanding that they might have been manufacture and sold pursuant to an exclusive manufacturing license with Warman International Ltd. The defendant denied that the plaintiff was entitled to anything because the plaintiff failed to prove it sold 'WARMAL' pumps which the defendant had allegedly passed off as the plaintiff's pumps.

Held:

(1) The plaintiff was entitled to damages for loss of business profit from the defendant because of passing off and unlawful interference with trade. They were concomitant and therefore not recoverable separately. Since the plaintiff obtained judgment on liability in the present suit against the defendant for passing off, it was found that the plaintiff had traded in 'Warmal' pumps as proof of damage was an essential element constituting the tort of passing off. The 'WALMAR' pumps that were sold by the defendant which were found passed off as 'WARMAL' pumps

represented the actual loss of sales and correspondingly loss of business profit for the plaintiff. The total loss of business profit amounted to RM250,206 and the computation had not been seriously challenged by the defendant. The amount claimed by the plaintiff amounting to RM250,206 was fair and reasonable. The loss of business profit claimable was not from the loss of sales suffered by the plaintiff in the market generally by specifically caused by the defendant. The claim against the defendant beyond what was already discovered was actually sold would be speculative and possibly oppressive to the defendant unless the plaintiff had cogent proof of suppression of further sales information by the defendant (see paras 14, 16 & 20–23).

(2) As for the plaintiff's claim of RM300,000 for damages for injury to goodwill and reputation, there was no reason that amount should be adopted and added without expert evidence adduced by the plaintiff. The plaintiff's loss of goodwill and reputation was assessed at RM58,750 (see para 27).

[Bahasa Malaysia summary

Ini adalah penilaian ganti rugi setelah perbicaraan berdasarkan kepada tanggungan kelirupaan nama dan kacau ganggu yang tidak sah bagi dagangan. Plaintif adalah syarikat sendirian berhad yang menjalankan perniagaan menjual pumps. Plaintif secara aktifnya telah mempromosikan dagangannya, produk-produk dan perkhidmatan-perkhidmatan dengan merujuk kepada suatu nama dan hak cipta 'WARMAL' dan permohonan hak cipta untuk 'WARMAL' telah difailkan di bawah hak cipta Kelas 7 dan Kelas 37. Defendan merupakan sebuah syarikat sendirian berhad dan menjalankan perniagaan pumps. Plaintif telah mengemukakan tuntutan ini terhadap defendan bagi kelirupaan nama, pelanggaran hak cipta dan kacau ganggu yang menyalahi undang-undang terhadap perniagaan plaintif. Plaintif menuntut ganti rugi terhadap kerugian perniagaan serta ganti rugi kehilangan nama baik dan reputasi. Untuk kerugian perniagaan, plaintif menghujahkan bahawa hasil jualan pumps 'WARMAL' yang boleh dikenal pasti melalui tanda 'WARMAL' pada plat besi yang dilekatkan oleh paku sumbat bagi kesemua pumps yang mana ianya telah dihasilkan dan dijual berdasarkan kepada lesen pembuatan oleh Warmal International Ltd. Defendan menafikan bahawa plaintif berhak untuk apa-apa kerana plaintif telah gagal untuk membuktikan bahawa mereka menjual pumps 'WARMAL' yang didakwa telah dikelirupaan nama sebagai pumps plaintif.

Diputuskan:

(1) Plaintif berhak untuk ganti rugi kerugian perniagaan daripada defendan kerana kelirupaan nama dan kacau ganggu yang menyalahi undang-undang terhadap perniagaan. Mereka adalah bersesama dan oleh itu tidak boleh dipulihkan secara berasingan. Memandangkan plaintif

telah mendapat penghakiman terhadap tanggungan di dalam tuntutan ini terhadap defendan untuk kelirupaan nama, ianya telah didapati bahawa plaintif telah menjalankan perniagaan pumps 'Warmal' sebagai bukti kerugian yang mana adalah elemen penting yang membentuk tort kelirupaan nama. Pam-pam 'WALMAR' yang telah dijual oleh defendan yang mana didapati telah dikelirupaan nama sebagai pumps 'WARMAL' membentuk kerugiaan jualan sebenar dan seterusnya adalah kerugian perniagaan untuk plaintif. Jumlah kesemua kerugian perniagaan sebanyak RM250,206 dan pengiraannya tidak disangkal dengan sepenuhnya oleh defendan. Amaun yang dituntut oleh plaintif berjumlah RM250,206 adalah adil dan saksama. Kerugian jualan perniagaan yang dituntut adalah bukan daripada kerugian jualan yang dialami oleh plaintif di pasaran secara umumnya tetapi yang telah secara spesifiknya dibuat oleh defendan. Tuntutan terhadap defendan yang mana melebihi apa yang telah diketahui telah dijual adalah spekulatif dan berkemungkinan akan menekan defendan melainkan plaintif mempunyai bukti yang kukuh terhadap penindasan jualan yang seterusnya oleh defendan. (lihat perenggan 14, 16 & 20–23).

(2) Bagi tuntutan oleh plaintif sebanyak RM300,000 untuk kerugian kecederaan muhibah dan reputasi, tiada alasan bahawa amaun perlu diterima pakai dan ditambah tanpa keterangan daripada pakar yang dibawa oleh plaintif. Kehilangan nama baik dan reputasi dinilai pada RM58,750 (lihat perenggan 27).]

Notes

For cases on trademark and passing off, see 12(2) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2842–2843.

Cases referred to

Alternate Solution Resources v Akbar Batcha bin Mohamed Shamsuddin & Anor [2019] MLJU 426; [2019] AMEJ 0179, HC (refd)

General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd [1976] RPC 197, HL (refd)

Sinma Medical Products (M) Sdn Bhd v Yomeishu Seizo Co Ltd & Ors [2004] 4 MLJ 358, CA (refd)

Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors [2018] Supp MLJ 312, FC (folld)

Tan Sri Khoo Teck Puat & Anor v Planitude Holdings Sdn Bhd [2018] Supp MLJ 312, FC (refd)

Wembley Gypsum Products Sdn Bhd v MST Industrial Systems Sdn Bhd [2007] 7 MLJ 193, CA (refd)

Teo Bong Kwang (Kok Eu Jin with him) (Wong Jin Nee & Teo) for the plaintiff. Saqti bin Mohd Aros (Nursyafiqah bt Zamani with him) (AQ Saqti & Assoc) for the defendant.

Lim Chong Fong J:

INTRODUCTION

[1] This is the assessment of damages after trial on liability in respect of passing off and unlawful interference with trade.

[2] The plaintiff is a private limited company incorporated on 30 April 1987 and involved in the business of trading in pumps. The plaintiff actively promotes its business, products and services by reference to the 'WARMAL' name and trademark and has filed trademark applications for the 'WARMAL' trademark in Class 7 and Class 37.

[3] The defendant is also a private limited company and involved, amongst others, in the business of trading in pumps.

BACKGROUND FACTS

[4] The plaintiff brought this suit against the defendant for passing off, infringement of well-known mark and unlawful interference with the plaintiff's trade.

[5] On 15 November 2017, my predecessor Wong Kian Kheong J entered judgment for the plaintiff against the defendant for passing off and unlawful interference with the plaintiff's trade ('judgment'). Paragraph 7 of the judgment reads:

> (7) Bahawa suatu siasatan untuk gantirugi berkenaan dengan perbuatan-perbuatan kekeliruan dan gangguan perdagangan plaintif dengan secara menyalahi undang-undang oleh defendan diperintahkan untuk membayar semua jumlah-jumlah yang didapati perlu dibayar selepas siasatan sedemikian.

[6] As the result, the plaintiff on 14 December 2017 filed this application for direction for assessment of damages. Consequently the affidavits that were filed for the purposes of this assessment of damages are as follows:

(a) the plaintiff's affidavit in support affirmed by Chuah Chun Hock dated 19 July 2018;

(b) the defendant's affidavit in reply affirmed by Yap Choon Hoong dated 9 August 2018;

(c) the plaintiff's affidavit in reply affirmed by Chuah Chun Hock dated 23 August 2018;

(d) the defendant's affidavit in reply (2) affirmed by Yap Choon Hoong dated 27 August 2018;

(e) the plaintiff's affidavit in reply (2) affirmed by Chuah Chun Hock dated 12 September 2018;

(f) the defendant's affidavit in reply (A) affirmed by Yap Choon Hoong dated 27 September 2018; and

(g) the plaintiff's affidavit in reply (3) affirmed by Chuah Chun Hock dated 9 October 2018.

[7] The assessment came before me and I permitted the defendant to cross-examine Chuah Chun Hock, the deponent of the plaintiff's affidavits on 5 March 2019.

[8] The parties thereafter filed their written submissions in chief and reply in respect of the assessment. Oral clarification with counsel was held on 13 May 2019. I thereafter adjourned my decision to deliberate on the arguments advanced by counsel.

[9] Now having done so, I hereby furnish my decision on the assessment below together with the supporting grounds.

CONTENTIONS AND FINDINGS

[10] The plaintiff claimed for damages for its loss of business profit as well as damages for injury to goodwill and reputation. In the former, the plaintiff contended that the sale of its 'WARMAL' pumps that are identified by the 'WARMAL' mark on a metal plate affixed by rivet to all its pumps notwithstanding that they may have been manufactured and sold pursuant to an exclusive manufacturing license with Warman International Ltd. The plaintiff thus claimed a minimum sum of RM250,206 based on actual sales of 'WALMAR' pumps sold by the defendant or a maximum sum of RM1,416,916.52 based on the probable sales of 'WALMAR' pumps sold by the defendant estimated from the sales revenues of the defendant derived from its accounting records. As to the latter, the plaintiff claimed a sum of RM300,000.

[11] In opposition, the defendant denied that the plaintiff is entitled to anything because the plaintiff has failed to prove that it sold 'WARMAL'

pumps which the defendant has allegedly passed off as the plaintiff's pumps. Accordingly to the defendant, the plaintiff has at all material times only sold 'WARMAN' pumps produced in Australia of which the plaintiff is merely an authorised distributor in Malaysia, Singapore and Brunei.

[12] Generally, the object of the assessment of damages is compensatory as explained by Edgar Joseph Jr FCJ in *Tan Sri Khoo Teck Puat & Anor v Planitude Holdings Sdn Bhd* [1994] 3 MLJ 777 as follows in respect of a breach of contract:

> At common law, the general principle which constitutes the starting point in the assessment of damages for breach of contract is, in the words of Parke R in *Robinson v Harman* [1843–60] All ER Rep 383 at p 385; (1848) 1 Ex 850 at p 855; 154 ER 363 at p 365, 'where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages, as if the contract had been performed'. This was cited with approval by the Court of Appeal in *Koufos v C Czarnikow Ltd* [1969] 1 AC 350 at pp 414 and 420; [1967] 3 All ER 686 at pp 710 and 714; [1967] 3 WLR 1491 at pp 1527 and 1532.

Likewise in the Court of Appeal case of *Wembley Gypsum Products Sdn Bhd v MST Industrial Systems Sdn Bhd* [2007] 7 MLJ 193, Low Hop Bing JCA held as follows in respect of infringement of trademark and passing off:

> [46] In our judgment, it is useful to set out the general object of awarding damages, contained in *Clerk & Lindsell on Torts* (16th Ed) at p 254 para 5–4:
>
> > The general object of an award of damages is to compensate the plaintiff for the losses, pecuniary and non-pecuniary, sustained as a result of the defendant's tort. More specifically, the assessment process is said to aim at restitutio in integrum. The general principle is, in the off-quoted words of Lord Blackburn, that the court should award 'that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation'. The principle admits of application to losses which are capable of reasonable precise calculation in money terms.
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> *UDA Holdings Sdn Bhd v Koperasi Pasaraya Malaysia Bhd* [2007] 6 MLJ 530 (CA).

[13] The law of assessment of damages for passing off has been set out in the Federal Court case of *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors* [2018] Supp MLJ 312 wherein Richard Malanjum CJ (Sabah and Sarawak) (later CJ) held as follows:

> [15] The current potential civil remedy against an infringer of an intellectual property right is either an assessment of the profit made by the infringer or an award of damages representing the lost profit suffered by the originator. And in an action for infringement of a trademark and passing off it is trite law that the same principle applies when considering the award of damages (see: *Dormeuil Frères SA and another*

v Feraglow Limited and another [1990] RPC 449). The usual principal head of damage is the loss of business profits caused by the diversion of the plaintiff's customers to the defendant as a result of the defendant's misrepresentation (see *Guangdong Foodstuffs Import & Export (Group) Corporation v Tung Fook Chinese Wine (1982) Co Ltd and another HCA011061 A/1995, Prince Manufacturing Inc and another v ABAC Corporation Australia Pty Ltd and another* (1984) 57 ALR 159; [1984] FCA 356).

[16] In *McGregor on Damages* (16th Ed), at paras 1947–1948 at pp 1261–1262, it is said thus:

> Little attention has been given to the assessment of damages despite the many cases of passing off in the reports. *Spalding v Gamage* and *Draper v Trist* are the only cases of importance. The principal head of damage is the loss of business profits caused by the diversion of the plaintiff's customers to the defendant as a result of the defendant's misrepresentation; beyond this, damages may be awarded for any loss of business goodwill and reputation resulting from the passing off. Damages under both these heads were held to be properly awarded in *Spalding v Gamage* (1918) 35 RPC 101, CA a result which has never since been doubted. *Draper v Trist* (1939) 3 All ER 513, CA dealt with a more complex situation where the defendant had passed off goods by selling them to middlemen, and there was no evidence that the middlemen resold. In these circumstances it was held that the plaintiff's loss of profits could not be a relevant consideration in assessing the loss but that the plaintiff was entitled to damages by reason of the presence of the deceptive goods onthe market, damages which included a sum for loss of reputation. Also, the plaintiff should be able to recover for further loss of profits through reduction of his prices, provided that the reduction is necessary to compete with the goods passed off by the defendant.

[17] The onus is upon the plaintiff to prove the loss actually sustained by reason of the defendant's conduct. The plaintiff is entitled to 'such damages as naturally flow from their unlawful act, and that there is no artificial limitation in the case of a passing off action' (see: *Spalding (A G) & Bros v A W Gamage Ltd and Benetfink & Co Ltd* [1915] 32 RPC 273 per Lord Parker of Waddington). It cannot also be presumed that the amount of goods sold by the defendant under an infringing trademark would have been sold by the plaintiff if not for the defendant's unlawful use of the trademark (see: *Leather Cloth Company v Hirschfield* (1865) LR 1 Eq 299). Speculative and unproven damage are also excluded (see: *The United Horse-Shoe and Nail Co Ltd v John Stewart and Co* (1888) 5 RPC 260; *Pneumatic Tyre Co Ltd v Puncture Proof Pneumatic Tyre Co Ltd* (1899) 16 RPC 209.

[18] Consistent with the established principle of law in award of damages, it is compensatory, that is, to put the plaintiff in the same position he would have been had the wrong not been committed (see: *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25). Put in another way it is '... to approach the assessment of damages in this case, in my view, is to compare the position in which the applicants might have been expected to be if the misleading conduct had not occurred with the situation they were in as a result of acting in reliance on that conduct (see *Esso Petroleum Co Ltd v Mardon* [1976] 2 All ER 5; [1976] QB 801. This is the same

(as), or analogous to, the general principle respecting the measure of damages in tort' (see: *Brown and another v Jam Factory Pty Ltd and another* (1981) 35 ALR 79.

[19] Damages for the infringement of intellectual property rights are tortious in nature. Their objective is to restore the claimant to the position he would have been in had the defendant not infringed. Thus, where the claimant is in the business of manufacturing goods, so that they are in competition with the defendant, then the measure of damages will be lost profits. However, it should be noted that damages is to be assessed liberally (see: *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1976] RPC 197). And while it is quite easy to state the general principle the mechanics of ascertaining damages actually sustained by the plaintiff are not simple to determine. There is no hard and fast rule to follow which is foolproof and universally accepted (see: *Spalding (A G) & Bros v A W Gamage Ltd and Benetfink & Co Ltd; Juggi Lal-Kamlapat and Juggilal-Kamlapat Mills of Cawnpore v Swadeshi Co Ltd* (1928) 46 RPC 74; *Prince Manufacturing Inc and another v ABAC Corporation Australia Pty Ltd and another*) . It depends on the facts of each case. It isbasically facts driven. However, in assessing damages it is also necessary to exclude those customers of the defendant who were not misled in making their purchases. Otherwise the claimant would be overcompensated. Damages may also be awarded for loss of business reputation and goodwill resulting from the infringement and passing off.

[14] The plaintiff here is entitled to damages for loss of business profit from the defendant because of passing off and unlawful interference with trade. They are concomitant and therefore not recoverable separately.

[15] I observed the defendant's sole contention in defence in this assessment is that the plaintiff traded in 'Warman' pumps but did not sell any 'Warmal' pump, thus there is no damages claimable in respect of the defendant having passed off trading in 'Warmal' pumps. This is of course flatly denied by the plaintiff.

[16] Since the plaintiff has obtained judgment on liability in this suit against the defendant for passing off, I must take it that my predecessor Wong Kian Kheong JC (now J) has affirmatively found that the plaintiff has traded in 'Warmal' pumps as proof of damage is an essential element constituting the tort of passing off. In the Court of Appeal case of *Sinma Medical Products (M) Sdn Bhd v Yomeishu Seizo Co Ltd & Ors* [2004] 4 MLJ 358, it was plainly held by Nik Hashim JCA (later FCJ) that the three elements of the tort of passing off comprise of reputation, misrepresentation and damage. It is not my purview here at assessment of damages to revisit the correctness of the judgment on liability in this suit.

[17] Wong Kian Kheong JC (now J) has plainly held as follows in his grounds of judgment:

A 17. ... I am satisified that the plaintiff has succeeded to prove the plaintiff's Godwill on a balance of probabilities. This finding is based on the following evidence and reasons:

...

B (2) WARMAL mark on a metal plate is affixed by rivet to all WARMAL Pumps sold by the plaintiff.

...

22. I find as a fact that the plaintiff has succeeded to prove on a balance of C probabilities that the defendant has used WALMAR mark on its pumps in such a manner which has caused and continue to cause a Likelihood of Deception/Confusion (Defendant's Misrepresentation) that:

(1) the defendant's WALMAR Pumps are the same as or are similar to the plaintiff's WARMAL Pumps; and/or

D (2) the defendant's business is that of the plaintiff's or is affiliated, associated or related to the plaintiff's ...'

The above finding regarding the defendant's Misrepresentation is premised on the following evidence and reasons:

E ...

(i) ...

(iii) the plaintiff has been using WARMAL mark and name since its incorporation on 30.4.1987. The defendant was only incorporated on F 10.1.2013, more than 25 years after the plaintiff's incorporation. The onus is therefore on the defendant to ensure that the defendant's mark does not cause a Likelihood of Deception/Confusion ...

G **[18]** In respect of unlawful interference with trade, Wong Kian Keong JC (now J) held as follows in his grounds of judgment:

29. I find as a fact that the plaintiff has proven on a balance of probabilities that the defendant has committed the tort of unlawful interference with the plaintiff's business because —

H (1) The defendant has interfered with the plaintiff's business (Defendant's Interference) when —

(a) the defendant uses WALMAR mark on pumps sold by the defendant which causes a Likelihood of Deception/Confusion with I regard to WARMAL Pumps sold by the plaintiff;

(2) the defendant misrepresent in its website that Walmar mark is a registered trade mark, and

...

[19] In the premises and for purposes of assessment of the plaintiff's loss of business profit, the plaintiff has earlier at pre-trial discovered that the defendant actually sold seven units of 'WALMAR' pumps, to wit:

(a) two units of 'WALMAR WH-R 6/4'/'WALMAR 6-4' rubber lined heavy duty slurry pump in 2015;

(b) three units of 'WALMAR WH-R 6/4' rubber lined heavy duty slurry pump in 2016;

(c) one unit 'WALMAR' heavy duty centrifugal pump slurry pump model: WH-M 4/3' in 2016; and

(d) one unit 'WALMAR WH-R 6/4' rubber lined heavy duty slurry pump in 2017.

[20] Consequently, these 'WALMAR' pumps that were sold by the defendant which were found passed off as 'WARMAL' pumps represented the actual loss of sales and correspondingly loss of business profit for the plaintiff.

[21] Based on the plaintiff's average sales prices and profit margin of its corresponding pumps for these seven units in the relevant years 2015–2017, the plaintiff computed its loss of business profit as follows:

(a) RM99,600.50 x 38% margin x 2 units = RM75,696;

(b) RM99,600.50 x 39% margin x 3 units = RM116,532;

(c) RM74,600 x 39% margin x 1 unit = RM29,094; and

(d) RM99,600.50 x 29% margin x 1 unit = RM28,884.

The total loss of business profit amounted to RM250,206 and this computation has not been seriously challenged by the defendant.

[22] In the premises, I am satisfied that this minimum sum claim of the plaintiff amounting to RM250,206 is fair and reasonable.

[23] That notwithstanding, the plaintiff further claimed a maximum sum of RM1,416,916.52 based on its projected loss of sales between 2014 and 2017 at 25% of its yearly revenue. Although it has been held in *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kong Wah Trading Co) & Ors* following *General Tire and Rubber Co v Firestone Tyre and Rubber Co Ltd* [1976] RPC 197 that damages is to be assessed liberally, it is nonetheless fact centric. The assessment has to be in my opinion a best estimate of what is fair and reasonable in the circumstances. The product in issue here is specialised slurry pump which is not a commodity that is sold daily. The quantity of pumps sold will therefore not be ordinarily large. Moreover, the loss of business profit claimable is not

A from the loss of sales suffered by the plaintiff in the market generally but specifically caused by the defendant. As the result, my view is that the claim against the defendant beyond what was already discovered to be actually sold would be speculative and possibly oppressive to the defendant unless the plaintiff has cogent proof of suppression of further sales information by the B defendant.

[24] I therefore assess the plaintiff's loss of business profit at only RM250,206.

C

[25] As for the plaintiff's further claim of RM300,000 for damages for injury to goodwill and reputation, it was held by Richard Malanjum CJ (Sabah and Sarawak) (later CJ) in *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kwong Wah Trading Co) & Ors* as follows:

D

> [37] Now, on the loss of goodwill and reputation it is trite law that it is presumed and that the sum to be awarded is a matter of discretion.

[26] I have recently held in *Alternate Solution Resources v Akbar Batcha bin Mohamed Shamsuddin & Anor* [2019] MLJU 426; [2019] AMEJ 0179 that E the fair and reasonable amount of damages for loss of goodwill or reputation is RM58,750 following the amount of RM50,000 awarded in *Taiping Poly (M) Sdn Bhd v Wong Fook Toh (t/a Kwong Wah Trading Co) & Ors* adjusted for inflation at 2.5%pa in the absence of cogent expert evidence demonstrating a F substantial valuation by an intellectual property valuer registered with MyIPO. The adoption of RM50,000 is also not unreasonable here based on the number of years the plaintiff has been in business comparatively.

[27] Similarly, I see no reason why this amount should not be adopted and G added here too without expert evidence adduced by the plaintiff. Consequently, I assess the plaintiff's loss of goodwill or reputation at RM58,750.

CONCLUSION

H

[28] For the foregoing reasons, my assessment of the plaintiff's damages for passing off and unlawful interference with trade amounts to RM308,956, with interest thereon at 5%pa from the filing of the writ till full realisation. The plaintiff is also awarded cost of RM10,000 for this assessment subject to 4% I allocator.

Order accordingly.

Reported by Kamarul Anwar